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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE ULLOA FLORES,

Defendant and Appellant.

B300339

(Los Angeles County  
Super. Ct. No. GA094375)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Michael Villalobos, Judge. Affirmed.

Jose Jordan, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief  
Assistant Attorney General, Susan Sullivan Pithey, Assistant  
Attorney General, Steven D. Matthews and Roberta L. Davis,  
Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Jose Ulloa Flores appeals from the denial of his motion under Penal Code<sup>1</sup> section 1473.7 to vacate his conviction for possession for sale of cocaine. In support of his motion, defendant testified he did not understand the adverse immigration consequences of pleading no contest to the charge. The trial court found defendant's testimony not credible. That finding is supported by substantial evidence. Accordingly, we affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **1. Conviction**

Defendant is a Mexican citizen. In September 2014, the district attorney charged him with one count of possession for sale of cocaine (Health & Saf. Code, § 11351), and one count of possession for sale of methamphetamine (*id.*, § 11378). Defendant initially was represented by deputy public defender Armando Rodriguez (Rodriguez). Defendant subsequently retained private counsel Khanh Tuan Tran (Tran), and the trial court granted defendant's motion to substitute counsel on December 9, 2014.

Defendant accepted a plea agreement at a hearing on February 23, 2015. At the hearing, attorney Lance Filer (Filer) appeared for counsel of record Tran.

Before defendant pleaded, the prosecution informed him of his rights and provided several admonitions. Among them, the prosecution stated, "If you're not a citizen of the United States, your conviction in this case will result in your deportation, exclusion from the U.S., and denial of naturalization." The

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<sup>1</sup> Undesignated statutory citations are to the Penal Code.

prosecution then asked, “Have you discussed the immigration consequences with your attorney?” Defendant said, “Yes.” The prosecution asked, “Do you understand that the district attorney’s office will not extend an offer that will not have immigration consequences?” Defendant said, “Yes.”

Defendant pleaded no contest to the charge under Health and Safety Code section 11351. The trial court suspended imposition of sentence, placed him on three years of formal felony probation, and ordered him to serve 365 days in county jail, offset by 365 days in credit. On the prosecution’s motion, the trial court dismissed the count under Health and Safety Code section 11378.

## **2. Motion to Vacate Conviction**

On May 14, 2019, defendant filed a motion under section 1473.7 to withdraw his plea and vacate his conviction. In a supporting declaration, defendant contended that at the time he entered his plea of no contest, his counsel had not warned him of the immigration consequences of that plea or advised him to consult with an immigration attorney. Defendant further contended that had he known of the immigration consequences, he would have “pled to another charge or fought the case at trial.”

On June 20, 2019, the trial court held a hearing on the motion at which defendant and attorneys Filer and Tran testified. Filer testified he had no independent recollection of advising defendant regarding the immigration consequences of his plea, but it was his “normal practice” to give the “standard advisement that if you are not a citizen of the United States, a plea of no contest or guilty could result in your deportation, exclusion of admission, or denial of naturalization.” Filer said it was not his usual practice to ask a defendant if he or she was a United States citizen.

Tran testified that he knew at the time he represented defendant that defendant was undocumented. Tran “believe[d he] would have” explained to defendant that his plea would have immigration consequences, but did not have a specific recollection of what he told defendant. However, he “always talk[ed] about immigration consequences” with his clients, and “[couldn’t] imagine why [he] would not do that” in this case. Tran stated there were no notes in defendant’s case file regarding any immigration advisements.

Defendant testified that Tran and Filer never informed him of the immigration consequences of his plea. On cross-examination and under questioning from the trial court, defendant stated that Rodriguez, the public defender who first represented him, did tell him the charged offenses could lead to him being deported. Defendant also admitted on cross-examination that during two prior proceedings—one in 2008 for misdemeanor battery (§ 243, subd. (e)) and one in 2013 for driving without a license (Veh. Code, § 12500, subd. (a))—he was advised of the adverse immigration consequences of the charges against him before pleading no contest.

### **3. Trial court’s ruling**

The trial court denied defendant’s motion in a written order. The trial court stated that, because Tran and Filer had no independent recollection or case notes regarding whether they had discussed immigration consequences with defendant, it was “difficult for the court to determine whether private counsel rendered ineffective assistance of counsel by failing to advise and protect [defendant] from the adverse consequences of his plea.” The court concluded it did not have to make such a finding, however, because “[d]espite any deficiencies in private counsels’

representation of the defendant, the record strongly suggest[s] [defendant] was aware of the immigration consequences of his plea.”

In reaching this conclusion, the trial court noted that defendant had admitted he had been advised and was aware that his pleas in the 2008 and 2013 cases had potential immigration consequences. Further, in the instant case, the prosecution had informed defendant of the immigration consequences of his plea, and defendant confirmed on the record that he had discussed those consequences with his attorney and understood that the prosecution would not extend an offer without those consequences. Finally, defendant admitted that his public defender in the instant case, Rodriguez, had told him that the drug charges against him were deportable offenses. “Thus, [defendant’s] contention that he was unaware of the adverse immigration consequences of his plea is simply not credible.” The trial court found that “defendant has failed to carry his burden of proving ‘prejudicial error’ that resulted in a legally invalid conviction and sentence.”

Defendant timely appealed.

## **DISCUSSION**

Under section 1473.7, subdivision (a)(1), “A person who is no longer in criminal custody may file a motion to vacate a conviction or sentence” if “[t]he conviction or sentence is legally invalid due to prejudicial error damaging the moving party’s ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere. A finding of legal invalidity may, but need not, include a finding of ineffective assistance of counsel.”

It is a mixed question of law and fact whether counsel's purported errors in incorrectly advising a defendant of the immigration consequences of a plea renders the conviction invalid for purposes of section 1473.7. (*People v. Ogunmowo* (2018) 23 Cal.App.5th 67, 76.) Thus, in reviewing a ruling on a section 1473.7 motion, "[w]e accord deference to the trial court's factual determinations if supported by substantial evidence in the record, but exercise our independent judgment in deciding whether the facts demonstrate trial counsel's deficient performance and resulting prejudice to the defendant." (*Ibid.*) We defer to the trial court's credibility determinations if supported by the record. (*Id.* at p. 79.)

Here, the trial court made no determination regarding counsels' purportedly deficient performance, stating that such determination was "difficult" given counsels' lack of recollection or contemporaneous documentation. Instead, the trial court ruled based on a factual determination that, whatever errors counsel may have committed, defendant nonetheless understood the immigration consequences of his plea, and his contention to the contrary was not credible.

The trial court's credibility determination is supported by substantial evidence. As the trial court noted, defendant admitted that in two previous proceedings he had been advised, and understood, that his pleas had potential immigration consequences. (See *People v. Araujo* (2016) 243 Cal.App.4th 759, 764 (*Araujo*) [defendant's claim that she was unaware of deportation risk of plea "disingenuous" given, among other things, her criminal history].) He admitted that his first attorney in the instant case, Rodriguez, had informed him that his offenses rendered him deportable. The record also indicates the

prosecution gave a firm warning that defendant's plea "*will* result in your deportation, exclusion from the U.S., and denial of naturalization." (Italics added.) When asked if he had discussed those consequences with his attorney, defendant said yes. The prosecution further emphasized the point when it confirmed defendant's understanding that the prosecution would not contemplate a plea arrangement that did *not* have such consequences.

We further note that, although the trial court did not reach the question, defendant proffered no evidence apart from his own testimony that his counsel failed to advise him regarding the immigration consequences of his plea. Although Tran and Filer had no independent recollection of their discussions with defendant, both stated unequivocally that it was their normal practice to inform clients of the immigration consequences, and Tran specifically recalled that defendant was undocumented, indicating he was aware that defendant's immigration status was of particular concern. Filer's and Tran's testimony thus does not contradict the trial court's adverse credibility finding.

Defendant points to evidence he claims supports his contention that he did not understand the immigration consequences of his plea, including evidence that Tran and Filer communicated very little with him, a lack of counsels' "file notes" or an "express waiver in the court file," and defendant's own testimony. Under substantial evidence review, however, "[i]f the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding.'" (*People v. Westerfield* (2019) 6 Cal.5th 632, 713.) Any evidence of purported failings on the part of Tran or

Filer would also be irrelevant to the trial court's finding that defendant understood the immigration consequences of his plea *regardless* of counsel's deficiency.

Defendant contends there was evidence that defendant would not have entered his plea had he known of the immigration consequences of doing so. This argument is based on a false premise, because the trial court found defendant *did* know of the immigration consequences of his plea.

Defendant argues the trial court should not have considered the evidence that defendant was advised of the immigration consequences of his pleas in his 2008 and 2013 proceedings, claiming those admonitions were not "contemporaneous to (and within the scope of)" his motion under section 1473.7. Defendant cites no authority for this argument. As demonstrated by cases like *Araujo, supra*, 243 Cal.App.4th at p. 764, a defendant's criminal history properly is considered in evaluating whether the defendant knew his or her plea would have immigration consequences.

Defendant further argues that his possession of a particular type of work permit at the time of his plea in the instant case indicates he did not in fact suffer immigration consequences from his 2008 and 2013 pleas. Thus, defendant contends, those earlier pleas would not have caused him to believe that his plea to the drug offense would have such consequences. Defendant's position is unsupported by any argument or citation to authority regarding the work permit or how it might indicate a lack of immigration consequences from the 2008 and 2013 convictions. Accordingly, the argument is waived. (*People v. Halim* (2017) 14 Cal.App.5th 632, 644, fn. 8.)

**DISPOSITION**

The judgment is affirmed.

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BENDIX, Acting P. J.

We concur:

CHANEY, J.

SINANIAN, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.